

MINUTES

OF THE STATE ELECTION BOARD AT ITS MEETING

April 25, 2016

The State Election Board met in a Special meeting at 9:00 a.m. in Room B-6 of the State Capitol Building. Advance notice of the meeting was performed by filing a written notice with the Secretary of State on December 11, 2015, at 8:39 a.m. A copy of the agenda is attached.

Meeting was called to order by **Steve Curry**

**ROLL CALL:** STEPHEN CURRY, CHAIRMAN- **Present**  
THOMAS MONTGOMERY - **Present**  
DR. TIM MAULDIN - **Present**  
GERALD BUCHANAN - **Present**  
DEBI THOMPSON - **Present**

Also present were Senior Deputy Attorney General Jan Preslar and Assistant Attorney General Jason Seay. Note: Alternate State Election Board members Gerald Buchanan and Debi Thompson, while physically present, did not participate in the following Hearing on Contests of Candidacy, unless specifically noted in the Minutes.

**BUSINESS CONDUCTED AT THE MEETING**

1. Discussion with counsel of the procedure for conducting Contests of Candidacy enumerated in Agenda items 5 through 25.
2. Recess meeting in order to move to Room 230, Second floor, Senate wing (North Hall), State Capitol Building, the room in which the Contests of Candidacy will be heard beginning at 9:30 a.m. **ACTION TAKEN:** Mr. Montgomery moved to recess the meeting in order to move to Room 230, Second floor, Senate wing (North Hall), State Capitol Building, the room in which the Contests of Candidacy will be heard. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
3. Reconvene meeting in Room 230, Second floor, Senate wing (North Hall), State Capitol Building, to conduct the Contests of Candidacy hearings. **ACTION TAKEN:** At 9:31 a.m., Mr. Montgomery moved to reconvene the meeting in Room 230, Second floor, Senate wing (North Hall), State Capitol Building, the room in which the Contests of Candidacy will be heard. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
4. Initial announcements regarding contests of candidacy, contest procedure and docket call.
5. Hearing and decision in the Matter of the Contest of Candidacy of Dario Alvarado, **Stone v. Alvarado**, Cause No. 2016-01. Petitioner Shane Stone appeared *pro se*. Contestee Dario Alvarado did not appear. **ACTION TAKEN:** Mr. Montgomery moved that the Contestee is in default pursuant to 26 O.S.

- § 5-130 and further moved to sustain the petition and strike the name of Dario Alvarado from the list of candidates for State Representative, District 89. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
6. Hearing and decision in the Matter of the Contest of Candidacy of Kelly Lynn, Griffith v. Lynn, Cause No. 2016-09. Petitioner Claudia Griffith appeared *pro se*. Contestee Kelly Lynn did not appear. **ACTION TAKEN:** Mr. Montgomery moved that the Contestee is in default pursuant to 26 O.S. § 5-130 and further moved to sustain the petition and strike the name of Kelly Lynn from the list of candidates for State Representative, District 45. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
7. Hearing and decision in the Matter of the Contest of Candidacy of Larry R. Sturgill, Sharp v. Sturgill, Cause No. 2016-14. Petitioner Ron Sharp appeared through counsel, Glenn Coffee. Contestee Larry R. Sturgill did not appear. **ACTION TAKEN:** Mr. Montgomery moved that the Contestee is in default pursuant to 26 O.S. § 5-130 and further moved to sustain the petition and strike the name of Larry R. Sturgill from the list of candidates for State Senator, District 17. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
8. Hearing and decision in the Matter of the Contest of Candidacy of Paul Brewbaker, Ford v. Brewbaker, Cause No. 2016-15. Petitioner Roger Ford appeared by and through counsel, Glenn Coffee. Contestee Paul Brewbaker did not appear. **ACTION TAKEN:** Mr. Montgomery moved that the Contestee is in default pursuant to 26 O.S. § 5-130 and further moved to sustain the petition and strike the name of Paul Brewbaker from the list of candidates for State Representative, District 95. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
9. Hearing and decision in the Matter of the Contest of Candidacy of Ben Scroggs, Leewright v. Scroggs, Cause No. 2016-06. Petitioner James Leewright was present and represented by counsel, Glenn Coffee. Contestee Ben Scroggs was present *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. Chairman Steve Curry recused himself from this Cause. Alternate Member Gerald Buchanan heard this Cause acting in place of the Chairman. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 59 O.S. 2011, § 5-105(B) and further moved to strike the name of Ben Scroggs from the list of candidates for State

Senator, District 12. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Buchanan-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)

Chairman Curry returned to the hearing at this point.

10. Short Recess. **ACTION ITEM:** Chairman Curry moved to take a short recess until 11:20 a.m. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
11. Reconvened at 11:22 a.m. **ACTION ITEM:** Chairman Curry moved to reconvene the hearing. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
12. Hearing and decision in the Matter of the Contest of Candidacy of Samuel Brian Hill aka Brian Hill, Smith v. Hill, Cause No. 2016-08. Petitioner Bruce Lee Smith was present and represented by counsel, Kevin Calvey. Contestee Samuel Brian Hill appeared *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. **ACTION TAKEN:** Dr. Mauldin moved to sustain the petition pursuant to 26 O.S. 2011, § 5-110 and further moved to strike the name of Brian Hill from the list of candidates for State Representative, District 87. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
13. Hearing and decision in the Matter of the Contest of Candidacy of Whitney Cole, Nichols v. Cole, Cause No. 2016-11. Petitioner Monroe Nichols was present and represented by counsel, Scott Inman. Contestee Whitney Cole did not personally appear. Contestee answered the petition by presenting a cashier's check in the amount of \$250. Ms. Cole also filed a written answer in the cause. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 26 O.S. 2011, § 5-110 and further moved to strike the name of Whitney Cole from the list of candidates for State Representative, District 72. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
14. Hearing and decision in the Matter of the Contest of Candidacy of Phillip Arnold, Moore v. Arnold, Cause No. 2016-19. Petitioner Lewis Moore appeared *pro se*. Contestee Phillip Arnold appeared *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 14 O.S. 2011, § 108 and further moved to strike the name of Phillip Arnold from the list of candidates for State Representative, District 96. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-

0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
15. Adjourn for Lunch. **ACTION ITEM:** Chairman Curry moved to recess the hearing for lunch until 12:40 p.m. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
16. Reconvened at 12:40 p.m. **ACTION ITEM:** Chairman Curry moved to reconvene the hearing. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
17. Hearing and decision in the Matter of the Contest of Candidacy of Matt Von Tungeln, Baker v. Von Tungeln, Cause No. 2016-20. Petitioner Rhonda Baker appeared in-person and represented by counsel, Ralph Shortey. Contestee Matt Von Tungeln appeared *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. However, Contestee announced that he wished to withdraw his challenge, and he admitted that the allegations of the Petitioner are correct. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 14 O.S. 2011, § 108 and further moved to strike the name of Matt Von Tungeln from the list of candidates for State Representative, District 60. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
18. Hearing and decision in the Matter of the Contest of Candidacy of Corey Perry, Virgin v. Perry, Cause No. 2016-02. Petitioner Emily Virgin appeared *pro se*. Contestee Corey Perry appeared *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. **ACTION TAKEN:** Dr. Mauldin moved to sustain the petition pursuant to 14 O.S. 2011, § 108, but the motion failed for the lack of a second. **ACTION TAKEN:** Chairman Curry moved to **not** sustain the petition pursuant to 14 O.S. 2011, § 108. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-no. Motion passed, 2-1. The Board next considered the Petitioner's allegation that Contestee is disqualified to be a candidate for public office, pursuant to 26 O.S. § 5-105a. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 26 O.S., § 5-105a and further moved to strike the name of Corey Perry from the list of candidates for State Representative, District 44. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
19. Short Recess. **ACTION ITEM:** Mr. Montgomery moved to take a short recess until 2:45 p.m. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.

20. Hearing Reconvened. **ACTION ITEM:** At 2:49 p.m., Chairman Curry moved to reconvene the hearing. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
21. Hearing and decision in the Matter of the Contest of Candidacy of Bob Ed Culver, Meredith v. Culver, Cause No. 2016-10. Petitioner Matt Meredith was present and represented by counsel, Scott Inman. Contestee Bob Ed Culver was present and represented by counsel, Travis V. Jett. Contestee answered the petition by presenting a cashier's check in the amount of \$250. Contestee alleges a deficiency of the Petition because the Petitioner did not claim any factual allegations. **ACTION ITEM:** Mr. Montgomery moved to dismiss the Petition on its face. Chairman Curry seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-no; Dr. Mauldin-no. Motion failed, 2-1. Contestee next objected to Petitioner's Exhibits 4, 5, and 7 based on lack of admissibility. **ACTION ITEM:** Mr. Montgomery moved to dismiss the Contestee's objections on admissibility. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. The Board next considered numerous exhibits presented by both Petitioner and Contestee, and heard witnesses. **ACTION TAKEN:** Mr. Montgomery moved to deny the petition pursuant to 26 O.S., § 5-130 and further moved to retain the name of Bob Ed Culver on the list of candidates for State Representative, District 4. Chairman Curry seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
22. Hearing and decision in the Matter of the Contest of Candidacy of Brooke McGowan, Sharp v. McGowan, Cause No. 2016-13. Petitioner Ron Sharp was not present, but was represented by counsel, Glenn Coffee. Contestee Brooke McGowan appeared, *pro se*. Contestee answered the petition by presenting a cashier's check in the amount of \$250. **ACTION TAKEN:** Mr. Montgomery moved to deny the petition pursuant to 14 O.S., § 80.8 and further moved to retain the name of Brooke McGowan on the list of candidates for State Senator, District 17. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
23. Short Recess. **ACTION ITEM:** Mr. Montgomery moved to take a five-minute recess. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
24. Hearing Reconvened. **ACTION ITEM:** At 4:33 p.m., Mr. Montgomery moved to reconvene the hearing. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.
25. Hearing and decision in the Matter of the Contest of Candidacy of Steven J. Vincent, Loveless v. Vincent,

Cause No. 2016-17. Petitioner Kyle D. Loveless appeared *pro se*. Contestee Steven J. Vincent did not appear, did not submit a cashier's or certified check for \$250, as required by 26 O.S. § 5-129, nor provide a written answer. Petitioner submitted an affidavit from the Canadian County Sheriff, which showed that the Sheriff did serve the Contestee, however, not within the 24-hour time limit as required by statute. **ACTION TAKEN:** Chairman Curry moved to accept the Sheriff's return of service as a proper attempt, pursuant to 26 O.S. § 5-125. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. After further consideration, the Board found that the Contestee was in default, pursuant to 26 O.S. § 5-130. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition pursuant to 26 O.S. § 5-130 and further moved to strike the name of Steven J. Vincent from the list of candidates for State Senator, District 45. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)

26. Hearing and decision in the Matter of the Contest of Candidacy of Kelly Lynn, Etters v. Lynn, Cause No. 2016-18. Petitioner Marc Etters appeared *pro se*. Contestee Kelly Lynn did not appear. However, in Cause No. 2016-09, the name of Kelly Lynn was previously stricken from the list of candidates for State Representative, District 45. **ACTION TAKEN:** Mr. Montgomery moved to dismiss the petition as moot. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
27. Hearing and decision in the Matter of the Contest of Candidacy of Darrell Knox, Matthews v. Knox, Cause No. 2016-21. Petitioner Kevin Matthews appeared, *pro se*. Contestee Darrell Knox appeared, and was represented by counsel, Michael Manning. Contestee answered the petition by presenting a cashier's check in the amount of \$250. **ACTION TAKEN:** Mr. Montgomery moved to dismiss the petition, pursuant 26 O.S. § 5-130 and 26 O.S. § 5-105a, and further moved to retain the name of Darrell Knox on the list of candidates for State Senator, District 11. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)
28. Hearing and decision in the Matter of the Contest of Candidacy of Joshua Lee Setzer, Marlatt v. Setzer, Cause No. 2016-12. Petitioner Bryce Marlatt was present and represented by counsel, Glenn Coffee. Contestee Joshua Setzer was present and represented by counsel, Mark Hammons. Contestee answered the petition by presenting a cashier's check in the amount of \$250. Mr. Setzer also filed a written answer in the cause. Petitioner presented

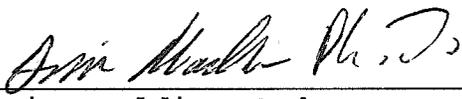
Exhibits A and B (voter registration records of Mr. Setzer), and asked that they be entered into evidence. **ACTION TAKEN:** Chairman Curry moved to accept Exhibits A and B into evidence. Mr. Montgomery seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. Petitioner asked the Board for a recess and for time (10 days) to prepare a brief and argument to answer the Contestee's alleged "overriding constitutional issues" related to Mr. Setzer's candidacy. Secretary Ziriak asked the Board and counsel whether an Executive Session is needed? **ACTION TAKEN:** Mr. Montgomery moved to enter into Executive Session. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. **ACTION TAKEN:** Mr. Montgomery moved to enter into Open Session. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0. **ACTION TAKEN:** Mr. Montgomery moved to have a continuance in order that the Board might consider the Contestee's alleged constitutional issues at a later date. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-no; Mr. Montgomery-no; Dr. Mauldin-no. Motion failed, 3-0. Next, at-length, the Board considered the Contestee's candidacy and allegations that he has been treated differently from other candidates and, further, that 26 O.S. §§ 5-105 and 5-118 are unconstitutional. Citing court precedent, the Board's legal counsel advised the Board to sustain the petition. **ACTION TAKEN:** Mr. Montgomery moved to sustain the petition and further moved to strike the name of Joshua Lee Setzer from the list of candidates for State Senator, District 27. Chairman Curry seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-no. Motion passed, 2-1. (Copies of Petition, Notice of Hearing, Return of Service, Exhibits, and Findings/Order attached)

29. **BUSINESS CONDUCTED:** Motion to Adjourn. **ACTION TAKEN:** Mr. Montgomery moved to adjourn until the next meeting. Dr. Mauldin seconded the motion. **ROLL CALL VOTE:** Mr. Curry-aye; Mr. Montgomery-aye; Dr. Mauldin-aye. Motion passed, 3-0.

STATE ELECTION BOARD

  
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Mr. Stephen Curry, Chairman

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Mr. Thomas Montgomery, Vice-Chairman

  
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Dr. Tim Mauldin, Member

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Mr. Gerald Buchanan, Republican Alternate

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Ms. Debi Thompson, Democrat Alternate